

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

XU-SHEN ZHOU, also known as
JASON ZHOU,

Plaintiff,

vs

6:08-CV-444

STATE UNIVERSITY OF NEW YORK
INSTITUTE OF TECHNOLOGY; DR. LISA
BERADINO, DR. STEPHEN HAVLOVIC,
DR. WILLIAM LANGDON, and DR. PETER SPINA,
Each Personally, and in their Official Capacity,

Defendants.

APPEARANCES:

XU-SHEN ZHOU
Plaintiff, Pro Se
Apt. B
18 West lake Street
Skaneateles, NY 13152

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
The Capitol
Albany, New York 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

DOUGLAS J. GOGLIA, ESQ.
Asst. Attorney General

ORDER

Defendants State University of New York Institute of Technology ("SUNYIT"), Stephen Havlovic, and Peter Spina move to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's complaint alleges claims under 42 U.S.C. § 1981 ("§ 1981"), and 42

U.S.C. § 2000e et seq ("Title VII"). He withdraws his § 1981 claims against these defendants in their official capacities, and the Title VII claims in their individual capacities. Otherwise, he opposes the motion.

Reviewing the allegations in the complaint as true for the purpose of this motion, it sets forth causes of action under § 1981, and Title VII. Further, based upon the unrefuted documentary evidence presented by plaintiff, his Title VII claims are not time-barred.

Therefore, it is

ORDERED, that

1. The § 1981 claims in the complaint against the defendant State University of New York Institute of Technology, Stephen Havlovic, and Peter Spina in their official capacity are DISMISSED;

2. The Title VII claims against defendants Stephen Havlovic and Peter Spina in their individual capacities are DISMISSED; and

3. The defendants shall file and serve an answer to the remaining allegations in the complaint on or before July 14, 2008.

IT IS SO ORDERED.

Dated: June 30, 2008
Utica, New York.



United States District Judge